

भारत का राजपत्र The Gazette of India

प्रसाधारण

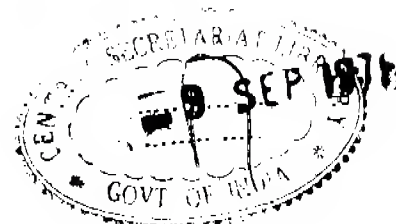
EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY



सं० 55] नई दिल्ली, मंगलवार, अगस्त 17, 1976/श्रावण 26, 1898
No. 55] NEW DELHI, TUESDAY, AUGUST 17, 1976, SRAVANA 26, 1898

इस भाग में निम्न पृष्ठ संख्या दी जाती है जिससे कि यह प्रत्येक संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 17th August, 1976:—

BILL No. 70 OF 1976

A Bill to amend retrospectively the law relating to sales tax as in force in the Union territory of Delhi during a past period and to validate taxes on the sale or purchase of certain goods during such period.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

1. This Act may be called the Delhi Sales Tax (Amendment and Validation) Act, 1976. Short title.

2. In this Act, unless the context otherwise requires,— Definitions.

(a) "Delhi" means,—

(i) as respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1956, the Part C State of Delhi;

(ii) as respects any period after such commencement, the Union territory of Delhi;

(b) "principal Act" means the Bengal Finance (Sales Tax) Act, 1941, as it applied to Delhi, from time to time;

(c) "sales tax extension notifications" means—

(i) notification No. S.R.O. 615, dated the 28th day of April, 1951;

(ii) notification No. S.R.O. 1204, dated the 6th day of August, 1951; and

Bengal
Act 6
of 1941.

(iii) notification No. S.R.O. 1564, dated the 4th day of October, 1951,

of the Government of India in the Ministry of Home Affairs.

Valida-
tion.

3. (1) Subject to the provisions of sub-section (2), each of the sales tax extension notifications shall, for all purposes (including the levy, assessment and collection of taxes under the principal Act and the purposes of section 73 of the Delhi Sales Tax Act, 1975), be deemed to have been, and to be, a law enacted by Parliament which took effect on the date on which such notification was published in the Gazette of India and accordingly anything done or purporting to have been done or any action taken or purporting to have been taken before the commencement of this Act under the principal Act or under the said section 73 shall be deemed to be, and to have always been, as valid and effective as if this section had been in force when such thing was done or such action was taken. 43 of 1975.

(2) Notwithstanding anything contained in sub-section (1), the provisions of sub-section (2) of section 6 of the principal Act shall, for all purposes (including the levy, assessment and collection of tax under that Act and the purposes of section 73 of the Delhi Sales Tax Act, 1975), have effect and be deemed always to have had effect as if the said sub-section (2) (hereinafter referred to as the named sub-section) conferred powers on the Central Government to add to, or omit from or otherwise amend, by notification in the Official Gazette, the Schedule (hereinafter referred to as the named Schedule) mentioned in the named sub-section, without giving any previous notice of its intention so to do. 43 of 1975.

(3) Notwithstanding any judgment, decree or order of any court or other authority, every notification, to add to, or omit from or otherwise amend, the named Schedule, issued or purporting to have been issued by the Central Government under the named sub-section shall be, and shall be deemed always to have been, as valid and effective as if this section had been in force when such notification was issued and accordingly—

(a) any tax levied, assessed or collected or purporting to have been levied, assessed or collected under the principal Act by reason of any amendment (whether by way of omission or otherwise) to the named Schedule specified in such notification shall be deemed to have been validly levied, assessed or collected in accordance with law;

(b) no suit or other proceeding shall be maintained or continued in any court or before any authority for the refund of, and no enforcement shall be made by any court or other authority of any decree or order directing the refund of, any such tax which has been collected;

(c) recoveries shall be made, in accordance with the proviso to sub-section (1) of section 73 of the Delhi Sales Tax Act, 1975, of all amounts which would have been collected as tax under the principal Act by reason of any amendment referred to in clause (a) but which had not been collected. 43 of 1975.

(4) For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

STATEMENT OF OBJECTS AND REASONS

When Delhi was a Part C State, the Bengal Finance (Sales Tax) Act, 1941 was extended to Delhi by a notification issued on the 28th April, 1951, under section 2 of the Part C States (Laws) Act, 1950. As a result of the Constitution (Seventh Amendment) Act, 1956, Delhi became a Union territory and the title of the Part C States (Laws) Act, 1950, was changed as the Union Territories (Laws) Act, 1950. The Bengal Finance (Sales Tax) Act continued to be in force in the Union territory of Delhi till its repeal in 1975 by the Delhi Sales Tax Act, 1975.

2. Certain defects in the extension and application of the Bengal Finance (Sales Tax) Act, 1941, have come to light as a result of the recent decision of the Supreme Court in *Lachmi Narain vs. Union of India & Others* (37 S.T.C. 267). In this case, the Supreme Court held that the power conferred by section 2 of the Union Territories (Laws) Act, 1950, to extend an enactment can be exercised in relation to an enactment only once. The notification under the Act for extending an enactment cannot be amended. In the second place, the Supreme Court held that the power under the Act to make modifications in an enactment at the time of extending the enactment is limited in scope and cannot be utilised for making modifications of a substantial nature.

3. Notification No. S.R.O. 615, dated the 28th April, 1951, by which the Bengal Finance (Sales Tax) Act was extended to Delhi was amended by three subsequent notifications, namely, notification No. S.R.O. 1204, dated the 6th day of August, 1951, notification No. S.R.O. 1564, dated the 4th day of October, 1951 and notification No. S.R.O. 3908, dated the 7th day of December, 1957. In the case before the Supreme Court, the validity of the amending notification issued in 1957 was in issue and the court held the same to be void. For the same reasons, the earlier amending notifications have also to be treated to be void.

4. Some of the modifications to the Bengal Finance (Sales Tax) Act contained in notification No. S.R.O. 615, dated the 28th day of April, 1951, by which the Act was extended to Delhi and in the notifications amending that notification appear to be beyond the permissible limits of modifications as laid down by the Supreme Court. In particular, the amending notification No. S.R.O. 3908, dated the 7th day of December, 1957, provided for amendment of sub-section (2) of section 6 of the Bengal Finance (Sales Tax) Act which empowered the Government to issue notifications for amending the schedule of goods exempted from tax. The sub-section, as it originally stood in the Bengal Act, provided for a notice of not less than three months and this requirement was modified to be one of notice of such period as may be considered reasonable. Since this modification is of a substantial nature and since the amending notification by which this modification was made is void according to the decision of the Supreme Court, all the notifications which have been issued under section 6(2) have to be treated as void.

5. Unless the various notifications aforementioned are validated, the Delhi Administration will have to allow claims for refund of tax collected under the Act and the amount involved is roughly of the order of Rs. 40 crores. Hence this Bill.

6. Clause 3(1) of the Bill seeks to validate notification No. S.R.O. 615, dated the 28th day of April, 1951, and the amending notifications Nos. S.R.O. 1204, dated the 6th day of August, 1951, and S.R.O. 1564, dated the 4th day of October, 1951. Clause 3(2) of the Bill seeks to amend sub-section (2) of section 6 of the Bengal Finance (Sales Tax) Act, 1941, with retrospective effect so as to cure the defects which have arisen by reason of the invalidity of notification No. S.R.O. 3908, dated the 7th December, 1957, and the defects in the notifications issued in pursuance of the said section 6(2) in the past. Sub-clause (3) of clause 3 of the Bill makes the normal validating provisions.

NEW DELHI;

PRANAB MUKHERJEE.

The 24th July, 1976.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117
OF THE CONSTITUTION OF INDIA

[Copy of letter No. 26/29/75-ST, dated the 6th August, 1976 from Shri Pranab Kumar Mukherjee, Minister of Revenue and Banking to the Secretary-General, Lok Sabha.]

The President having been apprised of the subject matter of the Bill to amend retrospectively the law relating to sales tax as in force in the Union Territory of Delhi during a past period and to validate taxes on the sale or purchase of certain goods during such period, has been pleased to recommend, in pursuance of clause (1) of article 117 of the Constitution of India the introduction of the Bill in Lok Sabha.

S. L. SHAKDHER,

Secretary-General.